

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:** B-219112

**DATE:** August 14, 1985

**MATTER OF:** Andrew Maikovich

**DIGEST:**

1. When Federal employees request administrative leave for a brief, determinate period of time to fulfill requirements of their position, the employing agency normally has discretion to grant the request. Thus, attorneys who are required to become members of a bar to maintain their employment may generally be granted administrative leave for the time required to attend a necessary state bar admission ceremony.
2. When a state provides for an attorney who is a Federal employee to be sworn in to its bar in the vicinity of the attorney's permanent duty station and place of residence, the employing agency may grant administrative leave only if the attorney chooses the option of being sworn in locally. An attorney who was employed by the Federal Election Commission in Washington, D.C., and was required to join a bar therefore may not be granted administrative leave for the time he took to travel to and attend a bar admission ceremony in Denver, Colorado, where the Colorado court rules provided a procedure for him to be sworn in before a local judge in the vicinity of Washington, D.C.

The National Treasury Employees Union requests a decision on the question of whether the Federal Election Commission may grant one of its employees administrative leave for the purpose of attending a ceremony to be

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sworn in to a state bar.<sup>1/</sup> We conclude that while it is generally within the discretion of a Federal agency to grant administrative leave for the time necessary to be sworn in to a bar for those employees required to join a bar to maintain their Government positions, administrative leave may not be granted in this case because the employee did not need to attend the ceremony to be admitted to the bar.

#### Background

Andrew Maikovich was hired by the Federal Election Commission in Washington, D.C., as a law clerk with the understanding that he would be promoted to a staff attorney position within 14 months upon his admission to a state bar, but would be terminated if he failed to become a member of a bar within that time.

Mr. Maikovich took and passed the Colorado bar examination. In addition to passing the examination, an applicant must take an oath, administered by a judge, to become a member of the Colorado bar. Mr. Maikovich took 2 days that were charged to annual leave to travel to and attend a swearing-in ceremony in Denver, Colorado. He asked the Commission for 2 days of administrative leave to attend this ceremony, but the Commission denied the request.

The Commission initially contended that it lacked the authority to grant administrative leave for employees to be sworn in to a state bar, even if they are required to do so to maintain their positions. Commission officials referred to our decision in Elmer DeRitter, 61 Comp. Gen. 652 (1982). There, we found it impermissible to grant administrative leave to an attorney, who did not need to be a member of a bar to maintain his position, to take an indeterminate period of time to represent indigent defendants,

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<sup>1/</sup> This decision is in response to a request from Anthony Raymond, president of Chapter 204 of the National Treasury Employees Union, concerning the request of Andrew Maikovich, an attorney employed by the Federal Election Commission, for administrative leave to be sworn in to the Colorado bar. The Federal Election Commission joins in this request. See 4 C.F.R. Part 22.

as required by his state to maintain his bar status. The decision included a comment that "[i]t would be inconsistent to grant administrative leave to allow an attorney to fulfill one such requirement [for bar membership] even if the time required is brief, but not the others." 61 Comp. Gen. at 654. Commission officials interpreted this comment as prohibiting administrative leave for the purpose of allowing an employee to attend a bar admissions ceremony.

The Union questions the correctness of the Commission's conclusion. Union officials suggest that because other Federal agencies, including the General Accounting Office, allow administrative leave for those attorneys required to join a bar to take bar oaths, it would be inconsistent for the Federal Election Commission to deny Mr. Maikovich's request.

#### Analysis and Conclusion

An authorized absence from duty with pay and without charge to annual leave is often referred to as "administrative leave" or "official leave." The term "administrative leave," although not specifically recognized by legislation or by regulation, is commonly used to denote a brief, authorized absence from regular duty without loss of pay for certain purposes deemed related to the official duties of employees, for some civic duties deemed related to the national interest which must be done during regular business hours, or for certain other reasons.<sup>2/</sup>

Consistent with the policy of granting administrative leave for purposes related to an employee's official duties, our own agency's practice is to grant administrative leave to employees for the time required by them to take necessary bar examinations, interviews, oaths or affidavits, and to perform necessary travel up to 8 hours each way, if they have not already been admitted to the bar in another jurisdiction and the head of the employee's division or office

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<sup>2/</sup> See, generally, Federal Personnel Manual Supplement 990-2, Book 630, Subchapter S11; see also 53 Comp. Gen. 582 (1974); 44 Comp. Gen. 333 (1964); and cases there cited.

determines that admission to the bar is required or advantageous to carrying out the employee's duties. See General Accounting Office Operations Manual, Order Number 2630.1, January 27, 1982.

Thus, we find that it is generally within the Commission's discretion to grant administrative leave for an employee to attend a necessary bar admissions ceremony. While the Commission suggests that our decision in the DeRitter case may be inconsistent with this conclusion, the dispositive factors in that case were the lengthy, indeterminate period of time required for the employee to represent indigent defendants and the fact that the employee was not required to be a member of the bar to maintain his Government position. The comment referred to above should be read in that context. In the present case, therefore, we would have no objection to administrative leave being granted to the employee to attend a bar admissions ceremony, if this attendance was necessary.

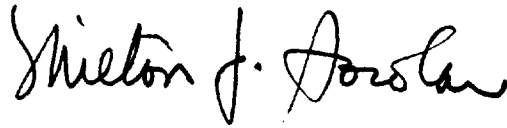
The Registration Clerk of the Supreme Court of Colorado has advised us, however, that Colorado's oath of bar admission may be administered by a judge outside of Colorado if an appropriate form indicating residence outside of Colorado is submitted and approved, and an appropriate affidavit is used. We have consistently denied administrative leave for unnecessary travel made by an employee through personal choice, for example, when an employee chooses to travel a long distance to vote in person but voting by absentee ballot is otherwise permitted.<sup>3/</sup> In the present case, because Mr. Maikovich chose to attend the admissions ceremony in Colorado even though he could have been sworn in at the locality of his place of residence and his duty station at Washington, D.C., we find that his trip was not necessary for his admission to the bar or for the maintenance of his employment with the Government. We thus conclude that it would be inappropriate for the Federal Election Commission to grant Mr. Maikovich administrative leave in these circumstances.

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<sup>3/</sup> See 32 Comp. Gen. 361 (1953); compare also 56 Comp. Gen. 865 (1977).

B-219112

We note that had Mr. Maikovich chosen to be sworn in to the Colorado bar before a judge in the vicinity of Washington, D.C., administrative leave for the time necessary for this purpose would have been appropriate. Under the actual circumstances, however, we find no basis for granting administrative leave, and annual leave was appropriately charged.

*for*   
Comptroller General  
of the United States